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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
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3 UNITED STATES OF AMERICA, New York, N.Y.  
4 v. 18 Cr. 827 (GHW)  
5 MIYUKI SUEN,  
6 Defendant.

7 -----x Sentencing  
8 February 10, 2020  
9 4:20 p.m.

10 Before:

11 HON. GREGORY H. WOODS,  
12 District Judge

13  
14 APPEARANCES

15 GEOFFREY S. BERMAN  
16 United States Attorney for the  
Southern District of New York  
17 BY: DANIEL G. NESSIM  
Assistant United States Attorney

18  
19 STEVEN G. BRILL  
Attorney for Defendant

20  
21  
22 ALSO PRESENT:

23 JIANHANG MAI, Mandarin Interpreter

24 JEREMY J. ROSS, HSI  
25

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1 (Case called)

2 THE DEPUTY CLERK: Counsel, please state your names  
3 for the record.

4 MR. NESSIM: Good afternoon, your Honor. Daniel  
5 Nessim for the government. Joining me at counsel table is  
6 Special Agent Jerry Ross of Homeland Security Investigations.  
7 I apologize to the court for the late start.

8 THE COURT: That's fine. Good afternoon.

9 MR. BRILL: Good afternoon, your Honor. Sullivan &  
10 Brill, by Steven Brill, on behalf of Ms. Suen. How are you?

11 THE COURT: Good. Thank you very much.

12 We are here to conduct a sentencing hearing for  
13 Ms. Suen.

14 Let me note for the record that we are using the  
15 services of an interpreter here today.

16 Ms. Suen, can you hear and understand me clearly now?

17 THE DEFENDANT (In English): Yes.

18 THE COURT: Thank you.

19 Please let me know if at any time you have any  
20 difficulty hearing or understanding anything that I or anyone  
21 else says in the courtroom --

22 THE DEFENDANT (In English): Yes.

23 THE COURT: -- here today, okay?

24 MR. BRILL: Your Honor, may I just say something?  
25 Ms. Suen does speak English and understands English. We

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1 thought it would be best for the purposes of this hearing that,  
2 in an abundance of caution, she uses the Chinese interpreter.

3 THE COURT: That's good. Thank you.

4 To the extent that we are using the Chinese  
5 interpreter, the one thing that I would ask is that Ms. Suen  
6 consider waiting to hear the entirety of the translation before  
7 responding in whatever language she chooses to respond in. The  
8 interpreter would translate anything that I say into Mandarin  
9 and, in the same way, to the extent that she chooses to address  
10 the court in Mandarin, the interpreter will do a translation of  
11 those statements into English.

12 So I have received and reviewed the following  
13 materials in connection with this sentencing:

14 First, the presentence report which is dated December  
15 12, 2019;

16 Second, the defendant's sentencing memorandum, which  
17 is dated January 27, 2020, together with its exhibits;

18 Third, the government's sentencing memorandum, which  
19 is dated February 3, 2020; and,

20 Fourth, the victim impact statement, which is dated  
21 December 18, 2019.

22 Have each of the parties received all of these  
23 materials?

24 MR. NESSIM: Yes, your Honor.

25 MR. BRILL: Yes.

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1 THE COURT: Thank you.

2 Have each of the sentencing memoranda been filed with  
3 the Clerk of Court?

4 MR. NESSIM: Yes.

5 MR. BRILL: Yes, your Honor.

6 THE COURT: Thank you.

7 Are there any other submissions in connection with  
8 this sentencing?

9 MR. NESSIM: Not from the government, your Honor.

10 MR. BRILL: None from the defendant.

11 THE COURT: Thank you.

12 Let me turn first to counsel for defendant. Counsel,  
13 have you read the presentence report?

14 MR. BRILL: I have.

15 THE COURT: Thank you.

16 Have you discussed it with your client?

17 MR. BRILL: Yes.

18 THE COURT: Thank you.

19 Let me turn to your client.

20 Ms. Suen, has the presentence report been translated  
21 for you?

22 THE DEFENDANT (In English): Oh, no.

23 THE COURT: Thank you. You can remain seated until I  
24 ask you to stand.

25 Have you read it in English?

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1 THE DEFENDANT (In English): Yes.

2 THE COURT: Thank you.

3 Did you fully understand it?

4 THE DEFENDANT (In English): Yes.

5 THE COURT: Thank you.

6 Have you discussed the presentence report with your  
7 counsel?

8 THE DEFENDANT (In English): Yes.

9 THE COURT: Have you had the opportunity to review  
10 with your counsel whether there are any errors in the  
11 presentence report and whether there are any other issues in  
12 the presentence report that should be addressed by the court?

13 THE DEFENDANT (In English): I totally understand.

14 THE COURT: Thank you.

15 Have you had the opportunity to review with your  
16 counsel whether there are any errors in the presentence report.

17 THE DEFENDANT (In English): No.

18 THE COURT: Thank you.

19 Have you had the opportunity to with him whether there  
20 are any errors in the report, regardless of whether or not  
21 there were any errors in the report?

22 THE DEFENDANT (In English): Yes.

23 THE COURT: Thank you.

24 Have you had the opportunity to review with your  
25 counsel whether there are any issues with the presentence

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1 report that should be raised with me?

2 THE DEFENDANT (In English): Yes.

3 THE COURT: Thank you.

4 Counsel for the United States, let me turn to you.

5 Have you read the presentence report?

6 MR. NESSIM: Yes, your Honor.

7 THE COURT: Thank you.

8 Does the government have any objections related to the  
9 factual accuracy of the presentence report?

10 MR. NESSIM: Only with regard to paragraph 50, which  
11 deals with restitution, and we have addressed in prior  
12 sentencing proceedings.

13 THE COURT: Thank you.

14 I understand that the issue that the government is  
15 raising is that the restitution amount listed -- that the  
16 amount listed in paragraph 50 is \$140,202.93, whereas, as I  
17 understand it from prior proceedings, that the appropriate  
18 number is 146,202.93.

19 Is that the concern, counsel for the United States?

20 MR. NESSIM: Yes, your Honor. And also, if we could  
21 strike the clause that it is "based on the retail value of the  
22 infringing items." It should just read it is "based on the  
23 amount that the victim expended on brand protection."

24 THE COURT: Thank you.

25 Counsel for defendant, do you agree with those

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1 proposed modifications to paragraph 50?

2 MR. BRILL: We do. We were provided with that  
3 modified restitution amount and the reasons for it, and I have  
4 spoken to my client about it and we are prepared to stipulate  
5 to that.

6 THE COURT: Thank you. Good.

7 So I will accept the stipulation of the parties with  
8 respect to the modifications to paragraph 50. As a result of  
9 those stipulated modifications, the reasonably foreseeable loss  
10 amount will be \$146,202.93, and we will delete from the  
11 paragraph the clause that reads, "the retail value of the  
12 infringing items and." Good.

13 So counsel for defendant, given those changes to  
14 paragraph 50, do you have any objections related to the factual  
15 accuracy of the presentence report?

16 MR. BRILL: No, your Honor.

17 THE COURT: Thank you.

18 Given that there are no objections to the factual  
19 recitations in the presentence report, the court adopts the  
20 factual recitations in the presentence report.

21 The presentence report will be made a part of the  
22 record in this matter and will be placed under seal. If an  
23 appeal is taken, counsel on appeal may have access to the  
24 sealed report without further application to the court.

25 Now, although district courts are no longer required

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1 to follow the sentencing guidelines, we are still required to  
2 consider the applicable guidelines in imposing sentence; and,  
3 to do so, it is necessary that we accurately calculate the  
4 advisory sentencing guidelines range.

5 In this case, the defendant pleaded guilty to Count  
6 One of the indictment in this case. The defendant pleaded  
7 guilty to the offense of conspiracy to traffic in counterfeit  
8 goods in violation of Title 18 United States Code Section 2320.

9 Counsel for the United States, does the government  
10 agree that a two-level adjustment is appropriate here under  
11 Section 3E1.1(a)?

12 MR. NESSIM: Yes, your Honor.

13 THE COURT: Thank you.

14 Is the government moving for an additional one-level  
15 reduction pursuant to Section 3E1.1(b)?

16 MR. NESSIM: Yes, your Honor.

17 THE COURT: Thank you.

18 I calculate the sentencing guidelines in a manner  
19 consistent with the plea agreement in the presentence report.  
20 The applicable sentencing guidelines manual is the November 1,  
21 2018 sentencing guidelines manual.

22 The base offense level is determined pursuant to  
23 Section 2B5.3(a).

24 Because the value of the infringing goods was greater  
25 than \$550,000 and less than \$1.5 million, 14 offense levels are



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1 added pursuant to Section 2B5.3(b)(1) and 2B1.1(b)(1)(H).

2 Because the offense involved the manufacture and  
3 importation of infringing items, a two-level increase is  
4 warranted pursuant to Section 2B5.3(b)(3)(A).

5 Because the defendant has demonstrated acceptance of  
6 responsibility for her offense through her plea allocution, I  
7 have applied a two-level reduction pursuant to Section  
8 3E1.1(a).

9 Upon motion by the United States, an additional  
10 one-level reduction is warranted under Section 3E1.1(b).

11 As a result, the applicable guidelines offense level  
12 is 21.

13 The defendant has no criminal history points. As a  
14 result, the defendant is in criminal history category I.

15 In sum, I find that the offense level is 21 and that  
16 the defendant's criminal history category is I. Therefore, the  
17 guidelines range in this matter is 37 to 46 months of  
18 imprisonment.

19 Does either party have any objections to the  
20 sentencing guidelines calculation?

21 MR. NESSIM: No, your Honor.

22 MR. BRILL: None from the defendant.

23 THE COURT: Thank you.

24 Let me turn first to counsel for the defendant.

25 Counsel, do you wish to be heard with respect to

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1 sentencing?

2 MR. BRILL: If your Honor pleases, yes.

3 THE COURT: Thank you. Please proceed.

4 MR. BRILL: Your Honor, if I may, first, just inform  
5 the court as to who is sitting here before you.

6 Ms. Suen's sister-in-law in the front row. In the  
7 second row is Ms. Suen's mother and grandmother, who is here  
8 with the assistance of a walker, but obviously felt it  
9 significant enough to rise up and make the appearance for  
10 today. And then behind them is Ms. Suen's son, as well.

11 I start just by reiterating, your Honor, with respect,  
12 what we had asked the court to do with respect to sentencing,  
13 and that is to sentence Ms. Suen to a variant sentence from the  
14 guidelines, to a sentence of home confinement and a term of  
15 supervised release. To support that request, obviously, I  
16 presented our arguments with the sentencing memorandum, which  
17 I'm sure the court has read, but I do want to just highlight  
18 some important aspects of the submission.

19 I would first just start by saying that probation also  
20 has come to the conclusion that, in their own opinion, they  
21 would recommend that your Honor deviate from the sentencing  
22 guidelines and vary below what the guidelines state. In their  
23 words, in the presentence report, they had stated that Ms. Suen  
24 does not appear to be a danger to society as she has no history  
25 of violence and has demonstrated herself to be a cooperative

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1 and productive individual while under supervision, and that was  
2 the crux of their reasoning as to why they felt a mitigating  
3 sentence was appropriate.

4 They were, though, concerned with a prior contact that  
5 Ms. Suen may have had several years ago, and perhaps the court  
6 may be concerned with that as well. And I would just briefly  
7 address that by saying that this is an incident, to my  
8 understanding, that occurred regarding the selling of goods in  
9 a flea market in Pennsylvania that were alleged to be  
10 counterfeit, that the incident occurred approximately ten years  
11 ago, and that, perhaps most importantly, the incident did not  
12 result in a criminal conviction, obviously, and that's why  
13 Ms. Suen stands before you with no criminal history.

14 So to the extent that those things mitigate your  
15 Honor's concern, I would hope that you view that for what it is  
16 and perhaps pay more weight to the instant case and obviously  
17 her conduct here, but also the mitigation that we submitted for  
18 the court's consideration.

19 I do just want to begin by also addressing maybe the  
20 implication in the government's submission, which really came  
21 down to a sentence, which was Ms. Suen did this for the money,  
22 or that this crime was committed for the money. And obviously  
23 to some extent that's true. I don't dispute that there is an  
24 incentive here to improperly derive money. But I wanted to  
25 make sure that the court did not look at this case and look at

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1 Ms. Suen with the impression that we are dealing with someone  
2 who is perhaps greedy or opportunistic.

3 Obviously she admits her conduct. She admits her  
4 guilt. She committed a crime, and as part of that she is now  
5 prepared to suffer the consequences. But I do want to give the  
6 court at least an understanding of who she is and how the way  
7 in which she has lived her life has been everything but greedy  
8 or opportunistic or selfish. Hopefully your Honor got the  
9 flavor while reading the submission, but there were several  
10 aspects of her life that we learned about that I thought were  
11 important to mention now.

12 The first is just her son, who is here, Justin, who  
13 also wrote a letter, but describes their relationship by saying  
14 "I am supported by my mother every day, and she never gives up  
15 on me, even though I have not given much back to her. My mom  
16 has been there my whole life."

17 As your Honor may have read, Ms. Suen has been a  
18 single mother for almost the entirety of Justin's life. I  
19 think he is 20 and -- or he is 19. And Ms. Suen -- the father  
20 of Justin left Ms. Suen when he was about one year old. So  
21 since then, Ms. Suen has raised Justin to the individual he is  
22 now, who is a student at Manhattan Community College and, by  
23 all accounts, when I have met him, is a real upstanding  
24 individual, but that's because of the selflessness on the part  
25 of Ms. Suen.

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1           In addition to those words by Justin, he also wrote to  
2 your Honor that "my mother would always work as hard as she  
3 could so she could get food in my stomach and always made sure  
4 I would have enough to support myself. She would always give  
5 back and give it her all, even though she is tired and didn't  
6 have much money."

7           So of course this does not excuse her conduct, but it  
8 certainly hopefully gives the court another impression that we  
9 are dealing with a very dedicated mother and a good mother, and  
10 someone who cares very much that her son is raised as best as  
11 possible, even though Ms. Suen had very limited means.

12           Her selflessness didn't end with her son. What she  
13 does now, even since she has been arrested, your Honor, and has  
14 been doing full-time, is working at a senior center in  
15 Woodhaven, Queens, which is essentially an adult daycare  
16 center, where individuals are about 65 years and older, mostly  
17 Spanish speakers, of Hispanic descent, who are here in the  
18 United States, that range from 65 to 99 years old. And in that  
19 center that Ms. Suen works in full-time, they are given  
20 breakfast. For the women individuals that are there, their  
21 nails are done. They are given lunch. They play dominoes.  
22 They play bingo. There are some terminally ill people in  
23 there, as well.

24           So this is her job right now and it has been since she  
25 has been arrested and perhaps before that, before she was

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1 arrested on this instant matter. So that should give the court  
2 also an even fuller understanding of how she spends her days,  
3 giving back to people and to society.

4 And then, of course, there are letters in support of  
5 her -- of her goodness and who she is as a person. And I will  
6 just pick out a few, I'm sure your Honor has read them, but  
7 just perhaps for this occasion it makes sense, Joelle Lum, who  
8 is a friend of hers for five years, mentions that "Ms. Suen has  
9 small gestures of kindness and has added up over the years and  
10 proved to me that Ms. Suen is extremely caring and giving. I  
11 am even more grateful to Ms. Suen because she has been a second  
12 mother to my boyfriend Matthew, who is Justin's best friend,"  
13 and then she goes on by saying "Ms. Suen is very hard working."

14 Renee Jin, who has been a friend of Ms. Suen's for 23  
15 years, mentions that "it is unfortunate that she is going  
16 through this particular difficult time, but I believe that her  
17 strength and moral character will allow her to prove her to be  
18 an outstanding contributor to society." And I would hopefully  
19 impress upon the court, respectfully, that that should be in  
20 your Honor's -- part of your Honor's consideration that when  
21 this sentence is completed, that you are looking at someone who  
22 has the potential and has been a contributor to society.

23 Matthew Lau, who is a friend of Justin's, felt  
24 compelled to write a letter by saying, "Miyuki is like a mother  
25 to me, and she is loving, caring, respectful, and very kind for

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1 being there for me and helping me grow up into the man I am  
2 today. She teaches us many morals in life and to give a second  
3 chance to others, and now I'm begging you to please give Miyuki  
4 Suen a second chance so that her friends, family, and I won't  
5 have to lose someone that is dear to us."

6 Pun Tong, who is Ms. Suen's ex-sister-in-law, says  
7 that, "Although she is divorced with my brother, she is forever  
8 my sister-in-law because she always took care of my mother and  
9 spent quality time with her. My mom had a ruptured aneurysm  
10 four years ago. She survived her first rupture and required a  
11 lot of time and care during rehab. Miyuki was there, rain or  
12 shine, to visit, spend time, and took good care of my mom."

13 And then the last letter, your Honor, which I thought  
14 was somewhat nicely -- thoughtful, which was written by Thuc  
15 Phan Quan, essentially spells out the acronym of "care,"  
16 C-A-R-E, and says the "C represents connect, and that Ms. Suen  
17 stays connected with her extended family; A is an awareness,  
18 and Ms. Suen is aware of the care, comfort, and attention  
19 senior citizens need; the R represents respect; and the E  
20 stands for empathy."

21 So obviously this should not, and I don't mean it to  
22 take away from the essentially the opposite conduct that was  
23 engaged in by Ms. Suen and that she made the awful choice to  
24 break the law and to do it for financial gain, but it hopefully  
25 should help to give the court a more full understanding of who

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1 exactly she is outside of this particular case.

2 Outside of the senior center, her work history is also  
3 admirable. I'm not sure there has been any time, other than  
4 perhaps when Justin was young, where Ms. Suen was not working  
5 in a gainful employment setting. She was a salesperson at a  
6 bath supply store, she was a bartender, and then, again, most  
7 recently, at a senior center in Queens. So she has been  
8 constantly working productively outside of this particular case  
9 and outside of this particular conduct.

10 I won't reiterate the history that we had laid out for  
11 the court in terms of Ms. Suen's childhood. I know sometimes  
12 it is hard to connect someone's childhood with decisions that  
13 they make so many years later, and I know how difficult that  
14 is, and I don't mean to gloss over it, but I think it is  
15 important to -- at least for the court to understand how hard  
16 she has worked in her life and where she has come from and how  
17 she has struggled until this point.

18 It was somewhat of an unfortunate childhood, where she  
19 was born in China but left with her grandparents in Hong Kong  
20 only so that her parents can bring her son from Hong Kong here  
21 to the United States, and that Ms. Suen was essentially left  
22 there and wasn't brought over to the United States until she  
23 was 20 years old.

24 You know, perhaps that adds to someone's feelings of  
25 self-worth or self-esteem, and perhaps that is why she is such



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1 a hard worker and struggles and does what she can in order to  
2 survive here in this city and also as a single mother. But of  
3 course we -- many people struggle, and that doesn't mean that  
4 they have to engage in criminal conduct in order to make ends  
5 meet. So obviously I don't condone that, and I would never  
6 argue that. But that explains it, that she is financially  
7 struggling here in order to make ends meet and she -- to the  
8 extent that she must live with her mother at her age, she is 45  
9 years old, and that essentially to supplement the income that  
10 she is making with the adult center, she chose to engage in  
11 this conspiracy in order to make additional money.

12 I will just add that from our -- upon our information  
13 and belief, in looking at her tax returns, and I think this is  
14 borne out by probation's report as well, that her 2018 adjusted  
15 gross income was \$15,000, so certainly below the poverty level  
16 there or close to it.

17 So if I could just discuss briefly the nature and  
18 circumstances of this particular case and I don't -- Ms. Suen  
19 does not shirk from her responsibility here or deviate from  
20 what she has said, but that essentially her struggling and her  
21 need and perhaps the necessity for additional income makes  
22 people do wrong things and bad things, and I think -- but then  
23 people for some reason do them anyway, and I think that what we  
24 have here is that particular decision-making and that  
25 particular conduct, and not someone who is a greedy or

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1 opportunistic or searching for the next scam or fraud that they  
2 can join and victimize individuals. I don't see any evidence  
3 that that's the type of person that Ms. Suen is.

4           There has been real remorse from Ms. Suen. I have  
5 spoken to her a lot in this case, and each time it is a very  
6 deflated conversation, and it is not because the jig is up and  
7 she is caught and she is upset that it had to come to an end  
8 and she has to get out of it, it's that she beats herself up  
9 over the fact that she has engaged in this and it is certainly  
10 humiliating in the face of her mother, her grandmother, and her  
11 son. That's certainly not the strong woman that she was or  
12 wants to be viewed as.

13           There is some question about her actual conduct. The  
14 last thing I want to do is litigate that now, because I don't  
15 want it to be misunderstood that I'm trying to minimize my  
16 client's conduct, but I can't help but take issue with some of  
17 the government's -- the way the government views Ms. Suen in  
18 this particular case. I will just submit to the court  
19 respectfully that -- well, the government essentially is saying  
20 that she played a central role, these are their words,  
21 relatively deep involvement in the conspiracy, and I think  
22 that, respectfully to the government, that that overstates  
23 Ms. Suen's conduct and involvement here. We would submit that  
24 Ms. Suen, despite her conduct here, which we don't dispute,  
25 which is that she is there supervising individuals who are

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1 loading and unloading merchandise from a warehouse on to a  
2 truck and vice versa, and we don't dispute that there was  
3 communication between her and members back in China, but we  
4 would hope that we would look at that for -- as honestly as to  
5 what that is.

6 First of all, Ms. Suen is not a high-level  
7 decision-making member of this conspiracy. She is not making  
8 decisions about it or leading it or organizing it or managing  
9 any members of the conspiracy except, except with respect to  
10 her being present when items were being loaded in and out of  
11 warehouses, of which she made a very nominal sum from.  
12 Certainly she did not derive any meaningful profit from the  
13 sale of these items or didn't sell these items, but merely she  
14 is being paid on a *per diem* basis when she engages in her  
15 conduct to facilitate the conspiracy. So certainly part of the  
16 conspiracy, but I wouldn't call her a relatively deep  
17 involvement or central role.

18 With respect to the conversations with individuals in  
19 China, my understanding is that that was not as someone who  
20 plays a part or has a part in the brokering of getting  
21 merchandise from China and bringing it to the states and sort  
22 of like -- as sort of a management position where she is part  
23 of the process of the importation, but rather that what our  
24 understanding was is that Ms. Suen is one of the rare instances  
25 of -- or has the ability to speak English as well as Chinese

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1 and was being asked to interpret for other individuals who did  
2 not speak Chinese who were engaged in the receiving and selling  
3 of items. So again, this does not excuse the conduct and it is  
4 still criminal, but it is not as -- it is not perhaps what the  
5 government is alluding to, which is that she is making these  
6 decisions and she is right up there with the people that are  
7 actually importing the tens of thousands of sneakers into this  
8 country.

9 There is no evidence that she played any role in that  
10 other than these chats. There is no evidence that she  
11 certainly derived any meaningful income, no evidence of that  
12 from something like that, and so I would ask respectfully that  
13 the court views that in the light that we are presenting or at  
14 least considers that when deciding how big a role-player  
15 Ms. Suen was.

16 Along those same lines, your Honor has already  
17 sentenced individuals, and obviously your Honor is aware of the  
18 need to avoid unwarranted sentencing disparities, and I don't  
19 mean to -- obviously the court is well aware of that. But I do  
20 just want to perhaps submit that I know that recently your  
21 Honor sentenced Jian Min Huang to a term of a year and a day  
22 and I couldn't help but -- in deciding whether -- how Ms. Suen  
23 fits into this and how she compares to the other  
24 coconspirators, that it was hard for me to distinguish Ms. Suen  
25 clearly from Ms. Huang. I imagine there are some facts that

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1 are different, but in the totality of it, as I read the  
2 government's submission of Ms. Huang, I read the government  
3 saying that -- this is a quote, that "Jian Min Huang had an  
4 important role in the conspiracy. She served as the main point  
5 of conduct for the law enforcement confidential source. The  
6 confidential source would contact Huang to purchase counterfeit  
7 sneakers and Huang would arrange for the delivery of the  
8 sneakers and accept payment. Huang sold counterfeit sneakers  
9 to the confidential source on at least nine occasions over  
10 approximately three months and, in recorded phone calls with  
11 Huang and the confidential source, Huang's remarks reveal the  
12 sophistication of the scheme and her important role in it."It  
13 also goes on to say that "Huang attempted to delay deliveries  
14 and avoid detection."

15 Of course Ms. Huang has been sentenced, and I bring  
16 this up only to the extent that your Honor can consider her  
17 conduct and Ms. Suen's conduct when evaluating whether or not  
18 there is a potential for a sentencing disparity. I understand  
19 the roles are a bit different and that Ms. Huang didn't do what  
20 Ms. Suen did but it's, frankly, hard to draw a stark contrast  
21 between them both in that they both seemed to play integral  
22 roles in the facilitation of the conspiracy. And so we would  
23 hope that your Honor avoids any unwarranted sentencing  
24 disparities.

25 Just a quick comment, your Honor, if I may, about the

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1 loss factor here. Obviously we don't dispute it. We stipulate  
2 to what was in the plea agreement. But I would be remiss if I  
3 didn't mention for your Honor's consideration surely something  
4 that the court already knows, but that the loss factor is a  
5 seriously debatable issue in how much it generates the  
6 guideline calculation and that many district judges have opined  
7 on that in very thoughtful ways.

8 If I can just read Judge Rakoff's on the Gupta matter  
9 a few years ago, which was this: Imposing a sentence on a  
10 fellow human being is a formidable responsibility. It requires  
11 a court to consider with great care and sensitivity a large  
12 complex of facts and factors. The notion that this complicated  
13 analysis and moral responsibility can be reduced to the  
14 mechanical adding up of small sets of numbers artificially  
15 assigned to a few arbitrarily selected variables wars with  
16 common sense -- wars with common sense. Whereas apples and  
17 oranges may have but a few salient qualities, human beings in  
18 their interactions with society are too complicated to be  
19 treated like commodities, and the attempt to do so can only  
20 lead to bizarre results."

21 So that's, unfortunately, this case and many others  
22 that the loss table essentially galvanizes the guideline to the  
23 point where the bulk of the advisory guideline range is as a  
24 result of that loss number, and so I would hope that the court  
25 sees that and understands -- obviously the court does, but that

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1 I would just reinforce the idea that the court perhaps should  
2 pay less attention to how great a value that has and perhaps  
3 more attention to Ms. Suen.

4 There is also another quote by a fellow district  
5 judge, Judge Underhill, who is not in this district, but that  
6 judge opines by saying that "not all actual loss is equally  
7 serious, and that a fraud that results in the loss of even a  
8 few thousand dollars by an elderly or sick person who, as a  
9 result of the loss, becomes unable to afford the necessities of  
10 life or medical care is much more serious than a fraud that  
11 results in ten or 100 times that loss by a large corporation  
12 able to absorb the financial consequences without a need to  
13 close plants, fire employees, or even declare the loss as  
14 material in public or financial reports."

15 So it logically follows that we are dealing with a  
16 multibillion-dollar corporation, and that does not take away  
17 from the crime or the conduct or the amount of money that is  
18 essentially lost, but it does -- it should hopefully focus the  
19 court a bit on how much weight to give the loss. Obviously it  
20 has great weight in the guidelines irrespective of whether we  
21 are dealing with a multibillion-dollar corporation or an  
22 individual who has been victimized and has suffered greatly.  
23 So hopefully the court can, again, weigh that accordingly.

24 A couple last things that I will just say with respect  
25 to deterrence, which I know this court and every sentencing

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1 court is very concerned about. If I could just be frank and  
2 say, when we are talking about general deterrence, you know, in  
3 this city alone, a couple blocks away, the idea of counterfeit  
4 and trademark violation goods are being bought and sold  
5 constantly and with the knowledge of the people that sell it  
6 and the people that buy it. That does not excuse it, but it is  
7 unclear how a jail sentence or even -- a guidelines sentence or  
8 a jail sentence could do much as far as a general deterrent.  
9 So hopefully that can inform the court's idea of general  
10 deterrence and how the sentence will play.

11 But with respect to, specifically, like I said,  
12 Ms. Suen has showed me nothing more than remorse and sadness,  
13 just the idea that she has gotten herself into this spot. But  
14 the fact also that she is going to be perhaps separated from  
15 her child, someone that she still is raising single-handedly is  
16 perhaps the worst of it all. But for someone who is 45 years  
17 old, with no criminal history, there is a real sadness, and I  
18 would submit that certainly, no matter what sentence your Honor  
19 gives, even home confinement or supervised release, that this  
20 experience will deter Ms. Suen in the future from engaging in  
21 anything like this.

22 Lastly, I will say that, if your Honor is  
23 contemplating an incarceratory sentence, that you would allow  
24 Ms. Suen the ability to surrender herself voluntarily. She has  
25 complied with all aspects of pretrial. You haven't seen her



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1 once with any specific violation. And, in fact, just the  
2 recently Pretrial Services officer reiterated that fact and is  
3 very happy with her behavior. So we are not dealing with  
4 someone who is not going to comply with your Honor's sentence  
5 should your Honor allow her the ability to surrender.

6 Thank you very much for your consideration.

7 THE COURT: Good. Thank you very much, counsel.

8 Let me turn to the defendant. Ms. Suen, do you wish  
9 to make a statement to the court.

10 THE DEFENDANT (In English): Yes.

11 Dear Judge Wood, I know what I do is wrong. I been  
12 learn my lesson. With the year I have the GPS on my feet,  
13 every day I think about this. I understand what I do is wrong,  
14 and please give me a chance to stay with my son, my parents.  
15 And I have one 90 years old grandma in China. I call her every  
16 week to ask how she is doing, and please give me a chance to be  
17 a good granddaughter. And also in the senior center I work  
18 right now, I go there every day, I try to make all the senior  
19 people happy. I try to make them laugh every day. I try to  
20 take care of them like my grandparents, drive them from them  
21 house to the senior center and drive they home, make sure they  
22 happy every day. And I make sure they take the medicine. If  
23 they have any problem they always talk to us. We treat them  
24 like our own grandparents, too. So please give me a chance to  
25 serve them every day. And I really learn my lesson, so please

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1 give me a chance to walk outside every day.

2 Thank you.

3 THE COURT: Thank you, Ms. Suen.

4 Counsel for the United States, does the government  
5 wish to be heard with respect to sentencing?

6 MR. NESSIM: Yes, your Honor.

7 This is the court's fourth sentencing in this case. I  
8 know the court is very familiar with this offense and the  
9 complexity of the scheme, its breadth, the flagrancy of the  
10 broader scheme, and the harm it's caused to its primary victim,  
11 but also to the public at large and retailers as it is  
12 recounted in the victim impact statement. So I won't recount  
13 any of that before the court today.

14 I just want to focus on a few points before the court  
15 imposes sentence.

16 First is the money aspect which defense counsel  
17 raised. You know, we don't have an ability to -- we don't  
18 really have a strong ability to contest the defendant's  
19 statements about how she was paid and her overall financial  
20 condition. However, this is a cash industry, and we are not  
21 sure that her financial picture adequately takes into  
22 consideration what she has made as a result of this scheme.  
23 And we just note that it seems like she maintains two  
24 residences, one of which seems to be a nonprimary residence in  
25 a quite nice building for which she obtained some type of

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1 Section 8 housing credit, so we are not sure that the money  
2 alone, as recounted by defense counsel, tells the full story  
3 here.

4 In addition, just turning to this defendant's  
5 individual culpability, to clarify a point raised by defense  
6 counsel, we do not take the position and we did not -- the plea  
7 agreement does not contain and we don't say now that a sort of  
8 management or leadership enhancement is appropriate here.  
9 However, we do think that in the course of this conspiracy, and  
10 among the defendants who were arrested, Ms. Suen is among the  
11 most culpable in the scheme, and her culpability is perhaps  
12 similar to Ms. Huang, who was recently sentenced by the court,  
13 but somewhat different.

14 Ms. Suen was surveiled and admitted as someone who  
15 coordinated the unloading and transportation of the boxes of  
16 the raw shoes and also the shoes that had been manufactured  
17 with counterfeit trademarks, and that indicates that she is  
18 someone who is trusted to control the location, transportation,  
19 and decision about when those shoes should be moved. She  
20 emptied out a location that was a storage location. You know,  
21 that was her coordinating that, at least directing things on  
22 that day.

23 In addition, the phone that was recovered showed that  
24 Ms. Suen does have contacts overseas with which she can discuss  
25 the production and importation of counterfeit shoes, and I

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1 think the quotations just show her knowledge of the  
2 counterfeiting industry, shoes in particular, selling the high  
3 quality stuff in New York and the bad stuff in Atlanta, you  
4 know, samples of these shoes, trade fairs taking place in  
5 China, to showcase the quality of the shoes being produced.

6 So we do think that Ms. Suen is someone who is on the  
7 more culpable side of the defendants charged in the scheme,  
8 certainly more culpable than either Fangrang Qu or Sounghua Qu,  
9 who have also been sentenced by the court.

10 Finally, in terms of deterrence, I think that we very  
11 much disagree with defense counsel on both general and specific  
12 deterrence, and I think that the defendant's case is actually a  
13 good example of the importance of both -- of an incarceratory  
14 sentence to advance both general and specific deterrence here.

15 The defendant's prior -- the ticket that's recounted  
16 in the Pretrial Services report was basically a slap on the  
17 wrist. It's not a conviction, and we don't really know the  
18 details, but it seems she obtained a ticket for dealing  
19 counterfeit goods more than ten years before her arrest in this  
20 case, and that was disposed of without really any, it seems,  
21 any sort of court process or punitive proceeding, and that did  
22 not deter this defendant from continuing to engage in  
23 counterfeit goods. You know, we don't know that that entire  
24 more than ten-year span she was involved in counterfeiting, but  
25 she was at least somewhat involved in it by the time of this

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1 scheme to be having these kinds of conversations with overseas  
2 sources, to be overseeing operations in part in the New York  
3 City area.

4 So I think that the defendant's case is a good example  
5 of both the general and specific deterrent advantages of  
6 actually -- not advantages, but the value to general and  
7 specific deterrence, of taking these cases seriously and  
8 sentencing within the guidelines range and certainly a  
9 sentence -- an incarceratory sentence in advancing those acts.

10 So if the court has any further questions, that's all  
11 from the government.

12 THE COURT: Good. Thank you very much, counsel.

13 So thank you very much, counsel and Ms. Suen.

14 Is there any reason why a sentence should not be  
15 imposed at this time?

16 MR. NESSIM: No, your Honor.

17 MR. BRILL: No, your Honor.

18 THE COURT: Thank you.

19 I will now describe the sentence that I intend to  
20 impose, but counsel will have a final opportunity to make legal  
21 objections before the sentence is finally imposed.

22 As I have stated, the guidelines range applicable to  
23 this case is 37 to 46 months of imprisonment. I have  
24 considered the guidelines range.

25 Under the Supreme Court's decision in *Booker* and its

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1 progeny, the guidelines range is only one factor that I must  
2 consider in deciding the appropriate sentence. I am also  
3 required to consider the other factors set forth in 18 U.S.C.  
4 Section 3553(a). These include:

5 First, the nature and circumstances of the offense and  
6 the history and characteristics of the defendant;

7 Second, the need for the sentence imposed to (a)  
8 reflect the seriousness of the offense, to promote respect for  
9 the law, and to provide just punishment for the offense; (b) to  
10 afford adequate deterrence to criminal conduct; (c) to protect  
11 the public from further crimes of the defendant; and (d) to  
12 provide the defendant with needed education or vocational  
13 training, medical care, or other correctional treatment in the  
14 most effective manner;

15 Third, the kinds of sentences available;

16 Fourth, the guidelines range;

17 Fifth, any pertinent policy statement;

18 Sixth, the need to avoid unwarranted sentence  
19 disparities among defendants with similar records who have been  
20 found guilty of similar conduct; and

21 Seventh, the need to provide restitution to any  
22 victims of the offense.

23 Ultimately I'm required to impose a sentence that is  
24 sufficient, but not greater than necessary, to comply with the  
25 purposes of sentencing as reflected in the statute.

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1           Based on a review of all of the factors which I'm  
2 going to discuss in more detail in a moment, I intend to impose  
3 a nonguidelines sentence of a year and a day of imprisonment,  
4 to be followed by two years of supervised release subject to  
5 the mandatory and special conditions described in the  
6 presentence report, which I'm going to detail with more  
7 specificity in a moment.

8           I do not expect to impose a fine.

9           I expect to order restitution.

10          I will impose the mandatory fee of \$100.

11          Let me begin by saying a few words about the nature of  
12 this offense, because it was a serious offense:

13          Ms. Suen was involved in a conspiracy to manufacture  
14 and sell counterfeit goods. The criminal conduct of these  
15 conspirators was bold and sophisticated. The conspirators  
16 imported generic sneakers into the United States that looked  
17 like Nike Air Jordans but did not bear the trademark Swoosh and  
18 Jumpman icons. Once the generic shoes arrived in the United  
19 States, they were altered to add those trademarked logos and  
20 marks, turning the generic shoes into counterfeit Air Jordans  
21 which the conspirators could sell in the United States at a  
22 significant profit.

23          The NYPD and Homeland Security Investigations  
24 inspected a number of shipping containers containing the  
25 generic sneakers. They observed members of the conspiracy,

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1 including Ms. Suen, directing the materials into a number of  
2 separate locations where I understand the conspirators affixed  
3 logos and marks that converted the generic products into  
4 counterfeit goods.

5 The quantity of the counterfeit goods for which this  
6 conspiracy was responsible was significant. From January 2016  
7 through March 2018, the company involved in the conspiracy  
8 imported approximately 385,280 generic Air Jordans from China.  
9 Authentic Air Jordans are valued at \$190 per pair. As a  
10 result, the conspiracy as a whole is responsible for over \$70  
11 million in losses.

12 Now, Ms. Suen was actively involved in the conspiracy.  
13 She was involved -- observed on multiple occasions leading,  
14 directing others as they unloaded boxes from various shipping  
15 containers. Notably, she was observed at more than one of the  
16 locations used by the conspiracy. She was observed at both  
17 what's described as location two and location three. At  
18 location two she arrived with several others and loaded  
19 hundreds of boxes into two trucks. The defendant asserts that  
20 her role was merely as a worker at a warehouse, however, she  
21 was involved in directing the movement of boxes between at  
22 least two separate locations.

23 Moreover, as the government has described here and as  
24 counsel for defendant has noted, there are a number of text  
25 messages that the government has pointed to that were found on



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1 her phone that would show that the defendant had a deeper  
2 familiarity with counterfeiting business, including operations  
3 in China and in more than one domestic market. For example, in  
4 chats exchanged in April 2018 Suen wrote, "You better have some  
5 samples ready. You can bring some samples to show him. Bring  
6 the shoes. Bring the purses, too. See if you have any samples  
7 to bring to him."

8 In the same chat, Suen continued, referring to a third  
9 party, "He said he wants to sell the high quality stuff in  
10 New York and the bad stuff in Atlanta. So he said he wants  
11 both materials, one of which is the cheap kind. Didn't he give  
12 you a sample last time?"

13 She continued, "The person said to ship more than  
14 1,000 boxes for him. Ship those that are not on the market.  
15 That person said there are no merchandise on the market. If  
16 there is, it will be sold immediately."

17 The government, I believe, properly argues that these  
18 communications indicate a familiarity with the counterfeiting  
19 business, account plans for the sale of counterfeit goods in  
20 more than one market in the United States, and knowledge of the  
21 China-based manufacturing of these counterfeit goods.

22 Ms. Suen, like Ms. Huang, is responsible for  
23 \$146,202.93 in losses. The reasonably foreseeable loss amount  
24 for her was \$710,400.

25 So this was a serious crime. Ms. Suen engaged in

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1 conduct that was self-evidently illegal. She engaged in the  
2 crime for her own personal financial gain. And, again, I do  
3 not trust that her tax returns accurately reflect the full  
4 amount of her recoveries in connection with this offense.

5 I recognize that this was not a violent offense, that  
6 the victim was a large corporation, and the public's trust in  
7 its marks. But fundamentally criminals, such as Ms. Suen,  
8 cannot believe that they can engage in such bald, elaborate  
9 conduct on multiple occasions without consequences  
10 Counterfeiting is a crime that should be taken seriously. This  
11 is a serious offense.

12 Ms. Suen is 45 years old. She was born in Qenzhou, in  
13 Zhejiang Province, in China, in January 1975. Ms. Suen lived  
14 with her parents in China until she was six years old, when her  
15 parents and younger brother relocated to Hong Kong, the first  
16 of their two moves without Ms. Suen. Ms. Suen reunited with  
17 her parents and brother when she was ten. I understand that  
18 Ms. Suen was charged with caring for her younger brother while  
19 her parents and grandparents worked. Ms. Suen was again left  
20 behind when her parents and brother illegally entered the  
21 United States looking for a better life for them, but not  
22 immediately for Ms. Suen as well, unfortunately.

23 Eventually after her parents obtained permanent legal  
24 status for themselves and I presume the brother, they sponsored  
25 Ms. Suen's immigration to the United States. She arrived in

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1 this country in 1995 when she was 20 and became a naturalized  
2 citizen in 2006.

3 Ms. Suen asserts that she lives with her parents now  
4 in Queens on the weekends and she lives in the apartment  
5 described by counsel for the United States on the Lower East  
6 Side of Manhattan during the week, an apartment for which I  
7 understand she is receiving Section 8 benefits.

8 Ms. Suen was married in 1999. The marriage lasted  
9 only about a year. Ms. Suen, as I understand it, is not in  
10 touch with her former husband, although she has received  
11 several letters of support from members of his family.

12 Ms. Suen which is left to raise her son alone. He is  
13 now, or at least was at the time the PSR was prepared, 19 years  
14 old, and is attending college here in Manhattan.

15 I have read his letter, and I have read the letters of  
16 his friends and other family members and friends, and I know  
17 from them that Ms. Suen has been a dedicated and caring mother  
18 and daughter. I know that she has worked to help the elderly  
19 in the community where she works. This offense does not define  
20 her, and I don't take anything away from the positive things  
21 that she has done over the course of her life, and those strong  
22 relationships are among the factors that will lead me today to  
23 impose a downward variant sentence from that suggested by the  
24 guidelines.

25 Ms. Suen suffers from a number of health conditions

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1 including type 2 diabetes, high cholesterol, and hypertension.  
2 She also suffers from asthma, and Ms. Suen denied a need for  
3 mental health treatment during her presentence interview  
4 although I understand that she may have received some help in  
5 2000 shortly after her divorce.

6 Ms. Suen has no reported history of substance abuse.

7 Ms. Suen graduated from high school before coming to  
8 the United States. She has had a series of legitimate jobs  
9 since. Since 2018 she worked at the senior center in Queens.  
10 From 2012 until 2018 she worked at a kitchen and bath supply  
11 company. Before that she worked as a bartender for about 14  
12 years, a place where I understand she met her former husband.

13 Most recently, Ms. Suen I should say has no prior  
14 criminal convictions, but unfortunately this is not her first  
15 encounter with the law. This is not her first encounter with  
16 the law with respect to counterfeiting of goods. Ms. Suen was  
17 arrested in 2007 and charged with trademark counterfeiting and  
18 deceptive business practices. Those charges were dismissed, I  
19 understand it, in just 2014, after, as I understand it,  
20 Ms. Suen completed an accelerated rehabilitative disposition  
21 program.

22 What is significant about that incident is that this  
23 crime is not her first involvement in the criminal justice  
24 system for counterfeiting. She had a wake-up call, an  
25 interaction with law enforcement regarding counterfeiting and

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1 why it is illegal, and she had an opportunity from that point  
2 to not sell counterfeit goods. But she continued to do so.  
3 Moreover, she did so in the series of incidents involved in  
4 this case in 2018, which is a relatively short number of years  
5 after receiving a dismissal of her prior charges, suggesting to  
6 me fundamentally that she did not take advantage of the  
7 opportunity to learn from the prior treatment of her conviction  
8 about the importance of complying with the law.

9 Now, I believe that a meaningful sentence is important  
10 in this case to promote respect for the law and to impose a  
11 just punishment. I'm required to consider the deterrent effect  
12 both on Ms. Suen personally and also the need to deter others  
13 from committing this type of crime.

14 With respect to personal deterrence, I do have some  
15 concern about the possibility that Ms. Suen will be tempted to  
16 recidivate. Ms. Suen has had legitimate jobs, but she engaged  
17 in this illegally obvious illegal conduct in order to  
18 supplement her income. She was arrested for selling  
19 counterfeit goods before and charged. As I understand it, she  
20 participated in a rehabilitation program but did not take  
21 advantage of that opportunity to turn away from criminal  
22 conduct. Instead, she engaged in this offense. So I fear  
23 fundamentally that the perceived financial pressures or need  
24 that led Ms. Suen to engage in this offense may tempt her  
25 again.

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1 I recognize that Ms. Suen is actively involved in the  
2 lives of her parents and her son, but they are all adults. And  
3 also significantly her support and her responsibilities to her  
4 family did not stop her from engaging in this obviously  
5 criminal course of conduct.

6 I also have to consider the goal of general  
7 deterrence, and this factor weighs substantially in my  
8 decision. I say that because fundamentally this is a serious  
9 offense. Those that perpetrate it should be aware that it is a  
10 serious crime, one that exposes them to substantial risk; and  
11 by imposing this meaningful sentence, I hope that it will be  
12 effective to dissuade others from engaging in similar conduct  
13 in a way that unfortunately Ms. Suen's treatment in  
14 Pennsylvania was not.

15 I have considered the extent to which Ms. Suen will be  
16 able to use the period of incarceration for educational or  
17 vocational training, medical care, or other correctional  
18 treatment. Here, this factor weighs against a substantial  
19 incarceratory sentence. Ms. Suen has completed a high school  
20 education outside of this country. I do not expect that a  
21 lengthy prison stay will advance her need for vocational  
22 training, given that she is currently employed and that she has  
23 a history of legitimate work. I expect that Ms. Suen will be  
24 able to receive appropriate treatment for medical conditions  
25 while incarcerated.

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1 I have considered the kinds of sentences available.  
2 In this case I believe that a sentence involving a term of  
3 incarceration is appropriate. I have given serious  
4 considerations to the guidelines and the policy statements. In  
5 this case I believe that a nonguidelines sentence is  
6 appropriate. I reach this conclusion having weighed all of the  
7 3553(a) factors and the purposes of sentencing, but let me  
8 highlight the principal reasons for my decision to impose a  
9 nonguidelines sentence and a downward variance.

10 First, while I believe that this is a serious offense,  
11 I recognize fully that it is not a crime of violence or a crime  
12 that suggests that there is substantial risk to the community  
13 going forward. I believe that a downward variance is warranted  
14 on that basis.

15 Second, while for the reasons that I described earlier  
16 I believe that there is a meaningful risk that Ms. Suen will  
17 again be tempted to recidivate, I believe that, given her  
18 history and family support and responsibilities, the risk is  
19 relatively modest and that a more extended term of imprisonment  
20 is not necessary in order to prevent Ms. Suen from  
21 recidivating.

22 I have considered the need to avoid unwarranted  
23 sentencing disparities. On balance, given the personal  
24 characteristics of Ms. Suen and the nature of her involvement  
25 in this offense, I believe that this sentence is appropriate

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1 for her.

2 As counsel for defendant suggested, no two sentencings  
3 is alike. There are a variety of circumstances that are unique  
4 to each individual who comes before the court at sentencing  
5 both with respect to their personal characteristics and the  
6 nature of their involvement in the offense. Here I will simply  
7 note that, as counsel for defendant said, there is, I believe,  
8 little that appropriately separates the ultimate conclusion of  
9 the court with respect to the sentences of Ms. Huang and  
10 Ms. Suen. They are, in my view, substantially more responsible  
11 than the Qus, who I previously sentenced based on the nature of  
12 their involvement in the offense. The Qus moved boxes with  
13 respect to the father and the other son whose involvement was  
14 also substantially more limited than that of Ms. Suen or  
15 Ms. Huang based on the information presented to me.

16 I have considered the need to provide restitution to  
17 the victims of this offense. That factor weighs in favor of a  
18 shorter incarceratory sentence here.

19 With that, Ms. Suen, can I ask you to please rise for  
20 the imposition of sentence.

21 Thank you, Ms. Suen.

22 It is the judgment of this court that you be sentenced  
23 to a year and a day of imprisonment.

24 Following your term of imprisonment, I am sentencing  
25 you to a term of two years of supervised release.



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1           The mandatory conditions of supervised release shall  
2     apply. They are:

3           The defendant shall not commit another federal, state,  
4     or local crime.

5           The defendant shall not unlawfully possess a  
6     controlled substance.

7           The defendant shall refrain from any unlawful use of a  
8     controlled substance.

9           The mandatory drug testing condition is suspended  
10    because the court has determined that the defendant poses a low  
11    risk of future substance abuse.

12          The defendant shall cooperate in the collection of DNA  
13    as directed by the probation officer. The standard conditions  
14    of supervised release 1 through 12 shall apply.

15          In addition, the following special conditions shall  
16    apply:

17          The defendant shall submit her person and any  
18    property, residence, vehicle, papers, computer, other  
19    electronic communication, data storage devices, cloud storage,  
20    or media and effects to a search by any United States probation  
21    officer and, if needed, with the assistance of any law  
22    enforcement. The search is to be conducted when there is  
23    reasonable suspicion concerning violation of a condition of  
24    supervision or unlawful conduct by the person being supervised.  
25    Failure to submit to a search may be grounds for revocation of

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1 release. The defendant shall warn any occupants that the  
2 premises may be subject to searches pursuant to this condition.  
3 Any search shall be conducted at a reasonable time and in a  
4 reasonable manner.

5 The defendant shall provide the probation officer with  
6 access to any requested financial information. The defendant  
7 shall not incur new credit charges or open additional lines of  
8 credit without the approval of the probation officer unless she  
9 is in compliance with the installment payment schedule.

10 The defendant shall be supervised in her district of  
11 residence.

12 There will be no fine because the probation department  
13 reports that the defendant is unable to pay one.

14 The defendant must pay to the United States a total  
15 special assessment of \$100.

16 Counsel for the United States, I understand that the  
17 government is not seeking forfeiture here, is that correct?

18 MR. NESSIM: That's correct, your Honor.

19 THE COURT: Thank you.

20 I order that the defendant pay restitution to the  
21 victim of the offense in the amount of \$146,202.92. I have  
22 been handed an order of restitution which I am executing.  
23 Payments by the defendant shall be made in accordance with the  
24 provisions of the order of restitution.

25 In sum, the order requires that the defendant commence

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1 monthly installment payments in an amount equal to 10 percent  
2 of her gross income payable on the first of each month 30 days  
3 upon release from prison. The order also includes rules  
4 requiring the defendant to make installment payments toward her  
5 restitution obligation and that she may do so through the  
6 Bureau of Prisons inmate financial responsibility plan. The  
7 restitution order itself provides additional payment  
8 requirements which I will not detail here but will be included  
9 in the judgment. The defendant shall notify the United States  
10 Attorney for this district within 30 days of any change of  
11 mailing or residence address that occurs while any portion of  
12 the restitution remains outstanding.

13 Counsel, does either counsel know of any legal reason  
14 why this sentence shall not be imposed as stated?

15 MR. NESSIM: No, your Honor.

16 MR. BRILL: We know of none, Judge.

17 THE COURT: Thank you.

18 The sentence as stated is imposed. I find that  
19 sentence to be sufficient, but not greater than necessary, to  
20 comply with the purposes of sentencing as set forth in  
21 18 U.S.C. Section 3553(a).

22 Thank you very much, Ms. Suen. You can be seated.

23 Ms. Suen, you have the right to appeal your conviction  
24 and sentence except to whatever extent you may have validly  
25 waived that right as a part of your plea agreement. The notice

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1 of appeal must be filed within 14 days of the judgment of  
2 conviction. If you are not able to pay the cost of an appeal,  
3 you may apply for leave to appeal *in forma pauperis*. If you  
4 request, the Clerk of Court will prepare and file a notice of  
5 appeal on your behalf.

6 Are there any other applications, counsel?

7 I'm happy to take up the application to permit  
8 Ms. Suen to self-surrender.

9 Are there any other applications at this time? First  
10 counsel for the United States.

11 MR. NESSIM: The government moves to dismiss the open  
12 count against the defendant.

13 THE COURT: Thank you.

14 Counsel for defendant, what is your position on that  
15 request?

16 MR. BRILL: No objection.

17 THE COURT: Thank you. I'm dismissing the open count  
18 against the defendant.

19 Counsel for defendant, any other application?

20 MR. BRILL: Yes, your Honor, just to the extent your  
21 Honor is able to recommend to the BOP that Ms. Suen be  
22 designated to a facility obviously that caters to her gender  
23 but also is close in proximity to New York City.

24 THE COURT: Thank you.

25 I would be happy to include a recommendation that

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1 Ms. Suen be placed in a facility close to New York City to  
2 facilitate visits by her family members, and I will include  
3 that.

4 Counsel for the United States, what's your view  
5 regarding the defendant's request that the defendant be  
6 permitted to self-surrender?

7 MR. NESSIM: No objection to defendant's voluntary  
8 surrender.

9 THE COURT: Thank you.

10 Counsel for defendant, when would you propose that I  
11 set as the date upon which Ms. Suen must surrender herself?

12 MR. BRILL: Can I just have a moment, your Honor?

13 THE COURT: Fine.

14 (Pause)

15 MR. BRILL: So Ms. Suen's son's birthday is April 17.  
16 Would the court see fit for a date after that?

17 THE COURT: Thank you.

18 What date do you propose?

19 MR. BRILL: Any time after.

20 THE COURT: Thank you.

21 April 17?

22 MR. BRILL: That is the birthday. Perhaps the 18th.  
23 I don't have a calendar with me. I'm sorry, your Honor, but if  
24 the 18th is a weekday, then we will respectfully ask for that  
25 day.

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1 THE COURT: Thank you.

2 It's a Saturday.

3 MR. BRILL: So maybe the 20th.

4 THE COURT: Counsel for the United States, what's your  
5 view?

6 MR. NESSIM: No objection.

7 THE COURT: Thank you. Good.

8 So, Ms. Suen, I am going to permit you to surrender  
9 yourself. You must do so on April 20 to the location  
10 designated by the Bureau of Prisons. If for any reason the  
11 Bureau of Prisons has not designated a facility for you by that  
12 date, which I do not expect, you must surrender yourself here  
13 at the office of the United States Marshal on that date. When  
14 I say "here," I'm referring to this courthouse at 500 Pearl  
15 Street. I expect, however, that it is more likely than not  
16 that the BOP will have designated a facility for you by then.

17 Between now and the date of yourself self surrender,  
18 all of the conditions of your pretrial release will apply. If  
19 you fail to appear as ordered, there will be I expect a strong  
20 possibility of collateral consequences for your failure to  
21 appear at the designated facility on the date that I am  
22 establishing. Good.

23 So, counsel, anything else for us to take up before we  
24 adjourn?

25 Counsel for the United States.

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1 MR. NESSIM: No, your Honor. Thank you.

2 THE COURT: Thank you.

3 Counsel for defendant.

4 MR. BRILL: No. Thank you for your consideration.

5 THE COURT: Thank you very much. Thank you very much,  
6 Ms. Suen. Thank you to her family members, as well. Thank you  
7 all.

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